

APPEAL NO. 021845
FILED SEPTEMBER 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 25, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th and 14th quarters. The appellant (carrier) appealed the SIBs determinations, arguing that the claimant failed to meet the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) to establish a total inability to work. The file does not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was entitled to SIBs for the 13th and 14th quarters. At the hearing, it was undisputed that the claimant had not returned to work and had not documented a job search during the relevant qualifying periods in dispute (March 11, 2002, through February 25, 2002). The claimant was basing his entitlement to SIBs for the 13th and 14th quarters on an assertion of a total inability to work. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with his ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a totally inability to work, and no other records show that the injured employee is able to return to work. The carrier argues that the claimant did not meet the requirements of Rule 130.102(d)(4) in that he did not provide "...a narrative report from a doctor which specifically explains how the injury causes a total inability to work..." and the carrier would also show that "...other records show that the injured employee is able to return to work."

The hearing officer found that "[t]he medical records of [Dr. S] constitute narratives which explain specifically how Claimant's injury caused a total inability to work during the qualifying periods for the 13th and 14th quarters." The hearing officer additionally explained how the functional capacity evaluation (FCE) failed to constitute a record which showed that the claimant had an ability to return to work because it contained erroneous information. The carrier argues that the correction letter dated February 4, 2002, from the physical therapist that administered the testing, constitutes an "other record" that shows that the claimant is able to work pursuant to Rule 130.102(d)(4). The hearing officer explained that the physical therapist indicated that there were errors in the report because she had "prepared her report using a template that contained information from a previous evaluation and that she neglected to change some of the information to reflect findings during Claimant's evaluation." The hearing officer stated that "the results of the FCE are found to be neither credible nor

persuasive.” The hearing officer’s determinations are sufficiently supported by the evidence.

Whether a claimant is entitled to SIBs based on having no ability to work is a factual determination for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATE SERVICES COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Veronica Lopez
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge